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Of the Province of the

MASSACHUSETTS-BAY,

RELATIVE TO THE

CONVENING, HOLDING AND KEEPING

The GENERAL ASSEMBLY

At *Harvard-College in Cambridge :*

AND

The several Messages

WHICH PASSED BETWEEN

His Honor the Lieutenant Governor

AND

The Two Houses,

Upon the Subject.

ublished by Order of the House of REPRESENTATIVES.

B O S T O N :

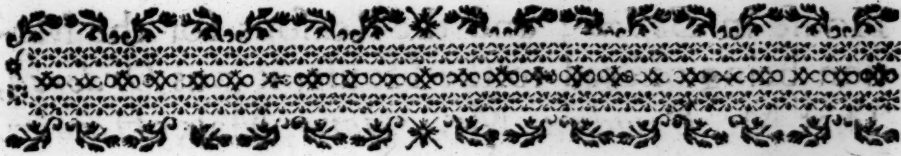
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House of REPRESENTATIVES, 1770.

THE
PROCEEDINGS
OF THE
COUNCIL
AND THE HOUSE OF
In the House of Representatives, June 13, 1770.

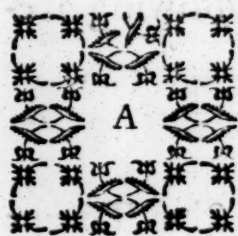
ORDERED, That the several Messages passed in the present Session, between his Honor the Lieutenant-Governor, and the two Houses, respecting the convening, holding and keeping the General Assembly out of the Town-House in *Boston*, be published; together with the Resolutions and Proceedings thereon: And that Mr. *Hancock*, Mr. *Adams*, and Capt. *Heath*, prepare the same for the Press accordingly.

Attest:

SAMUEL ADAMS, Clerk.



Proceedings, &c.



General Assembly, having been summoned by his Majesty's Writ, under the Hand and Seal of the Lieutenant Governor and Commander in Chief, to meet at Harvard College in *Cambridge*, on Wednesday the 30th of *May*, 1770, met at the Time and Place accordingly : And the Gentlemen returned to serve as Representatives of their respective Towns, having qualified themselves according to Law, proceeded to make Choice of a Speaker, who was presented to the Lieutenant-Governor, and by him approved of in Pursuance of the Royal Explanatory Charter.

It was then moved in the House of Representatives, to remonstrate to his Honor the Lieutenant Governor against the holding the General Assembly in this Place, or out of the Town-

House in *Boston* ; and the Reasons for the Motion being offered to the House, it was *Ordered*, That Mr. *Bowdoin*, Mr. *Adams*, Major *Hawley*, Mr. *Hancock* and Mr. *Leonard* of *Taunton*, prepare a Remonstrance accordingly, and report the same to the House.

In the Afternoon the said Committee presented a Draft to the House, which was read and accepted ; and thereupon it was *Ordered*, That Mr. *Hancock*, Mr. *Porter*, Capt. *Sheaffe*, Mr. *Hall* and Col. *Warren*, wait on his Honor the Lieutenant Governor with the following Remonstrance, viz.

May it please your Honor,

B EING returned by our respective Towns to represent them in the Great and General Court or Assembly of this Province, directed by his Majesty's Writ under your Hand and Seal, to be convened at Harvard-College in Cambridge, We beg Leave to represent to your Honor our Opinion: That the only Writ established by Law for the convening a General Assembly, is apparently formed, upon a Supposition that the Town-House in Boston is the *only Place* where the said Assembly is be convened, held and kept. Our Fathers in the Year 1721 were evidently of Opinion, that the convening, holding and keeping the Assembly at *any other Place*, was contrary to the Act
of

of this Province, of the Tenth of William the Third, which establishes the Form of the Writ: Accordingly, when the Assembly was then adjourned to this Place, though the Providence of God had rendered it impossible for them, consistent with Safety to their Lives, to meet in Boston, by Reason of a contagious Distemper which raged there, Governor *Shute* declared, that he did not mean that the Adjournment should ever after be drawn into Precedent: And the three Branches of the Legislature passed a Resolve, to make valid their Proceedings; which they would not have done, if they had thought the Adjournment from the Town-House in *Boston*, however necessary, had been consistent with the aforementioned legal Establishment.

Indeed in the Year 1729, Governor Burnet, without any such Necessity, ordered the Assembly to be convened at *Salem*: But the Representatives of the People then remonstrated to the Governor, the Illegality of the Measure; and altho' he insisted upon it, they never yielded the Point. We do not recollect any other Instance of the Removal of the Assembly from *Boston*, except in Cases of the same Necessity with that in 1721: But in the present Case, not the least Shadow of Necessity appears: For no Instructions or Orders from any Authority inferior to that of the whole Legislature, can avail with your Honor to set aside a legal Establishment. How

far you may be bound by the Instructions you may have received, is not for us to determine ; but when such Instructions, shall in their Operation infringe the legal and essential Rights of this Assembly, you cannot but expect, they will awaken our Attention and alarm our Jealousy.

If we could possibly admit, that the Law above-mentioned did not absolutely determine the Town House in *Boston* to be the established Seat of this Assembly, and that it therefore remained a Prerogative of the Crown in your Honor's Discretion, to remove it to this or any other Place ; still it ought always to be remembered, that the Prerogative is a discretionary Power, in some Instances vested in the King, only for the Good of the Subject : We cannot presume that his Majesty would exercise that Power, or suffer any Servant of his to exercise it to a different end. " The Prerogative of the Crown extends not to do any Injury ; for, being created for the Benefit of the People, it cannot be exerted to their Prejudice." But the continuance of the Assembly in this Place, is not only attended with very great Inconvenience to us, being at a Distance from our Offices and Records ;—is not only contrary to the Ancient Custom and Usage of the Assembly, in direct Repugnance to the Constitution and Establishment aforesaid, but is also in many Respects so far from tending to the Good of the Subjects,
that

that it extends to their Injury and Prejudice. And we would particularly observe upon the great Impropriety of the Assembly being held in *this Place*, as it is an Invasion of private Property, and a Perversion of the true Design of our Forefathers in planting this Seminary of Learning : And it may also hereafter be made a Precedent, for the establishing the Authority of the College, in very different Hands from those in which its happy Constitution has placed it. For the above-mentioned Reasons we think it our indispensable Duty, before we proceed to the Business of the Assembly, to REMONSTRATE to your Honor, against its being held in this, or any Place, other than the Town-House in *Boston*.

Mr. *Hancock* from the Committee above-mentioned reported to the House that his Honor not being in the Chair, the said Remonstrance could not then be laid before him.—Whereupon the House passed the following Resolve, and ordered the same to be enter'd on the Journals, viz.

WHEREAS this House hath passed a Remonstrance to His Honor the Lieutenant-Governor, against the holding the General Court in *this Place*, or any other, than in the Town-House in *Boston*; which Remonstrance cannot now be presented, his Honor not being in the Chair : And whereas according to the Royal Charter of this Province

Province it is necessary that this Court proceed to the Choice of Councillors for the Year ensuing on this Day being the last Wednesday of May.

Therefore, Resolved, That this House do proceed to the said Election of Councillors at this Time only from Necessity:—PROTESTING against its being drawn into Precedent at any Time hereafter, or considered as a voluntary receding of the House from their Constitutional Claim.

The next Day the Committee appointed, presented the Remonstrance to the Lieutenant Governor, to which his Honor was pleas'd to return the following Answer.

Gentlemen of the House of Representatives,

BY the Charter, the Governor has the sole Power of Adjourning and Proroguing the General Assembly. There is no Limitation of Time or Place. Can it be supposed that meerly by Force of the Form of a Writ for calling the General Assembly, this Power is taken away or abridged? Will it not rather be supposed that the Word Boston in this Writ, is meer Matter of Form, especially when it is considered that it will be equally necessary for the Writ to be dated at Boston, (for that is a Part of the Form) as it is for the Court to be convened there? Now it must, in the very Nature of the Thing, be perfectly indifferent in what Place the Writ is dated.

I am sensible there have been Disputes upon this Point, both in Governor Shute's, and Governor Burnet's Administration ; but in Governor Burnet's Time, the Dispute as I apprehend, was settled ; and I cannot help being of Opinion that you are moving a Matter which has been more than Forty Years at Rest ; and I must put you in Mind that in the Year 1737, the King, for the more convenient carrying into Execution a Commission for settling the Line between this Province and New-Hampshire, instructed the Governor to remove the General Court to Salisbury, where more than one Session was held : Whether this was necessary or not, I will not determine ; but if it was necessary, I know that his late Majesty was the sole Judge of the Necessity. I was then a Member of the House, and do not remember a Word to have been said of the Illegality of holding the Court in any other Town than Boston. The Point had been settled a few Years before, and was fresh in the Memory of the House.

If the Removal of the Court to Cambridge had been illegal, I do not think I could have justified myself in such Removal. I am sure his Majesty never intended that his Instructions should supersede or controul the Law.

I agree with you that the Prerogative of the Crown does not extend to do any Injury ; but
I

I cannot admit that the exercise of the Prerogative in this particular Instance is an Injury. I persuade myself you intend no more, than to represent to me your Opinion, that though it should be admitted to be legal, yet it is inconvenient to you, and to the College. If you desire me to Adjourn or Prorogue the Court to any other place in Cambridge than the College, I will immediately do it, and to such Place where you may be best accommodated; but I cannot remove the Court from Cambridge, until I know more of his Majesty's Pleasure than I do at present: For as I had occasion to observe to the last Assembly, I must govern myself by his Majesty's Pleasure, as it shall be signified to me, in all Cases, in which otherwise I might have a right to act, or not to act, according to my own discretion; for it appears to me to be preposterous to suppose, that the *sole* Power given to the Governor of Proroguing or Dissolving the Court was intended, as some would have it, to exclude the King from his Right of controuling the Governor: Nothing can be more manifest than that it is intended for no other Purpose than to exclude both the other Branches of the Court from any Share in this Power. I have transmitted every Thing that passed the last Session of the Court on this Subject, to be laid before his Majesty. I shall do the same with the Message you have sent me, and this my Answer to it; and I have no Doubt the

Royal

Royal Determination will be such as to give no just Cause of Complaint.

Council-Chamber, Cambridge 31st May, 1770. T. HUTCHINSON.

This Message being read in the House, it was *Ordered*, That Mr. Speaker, Mr. *Adams*, Mr. *Leonard*, Major *Hawley*, Mr. *Hancock*, Mr. *Porter*, Col. *Worthington*, Capt. *Sheaffe*, and Col. *Warren*, be a Committee to consider and report what Measure might be further proper for the House to come into, while the General Assembly is held out of the Town House in *Boston*.

On Tuesday the 5th June, the Committee came into the House, and the Chairman mov'd for a Committee to wait on the Lieutenant Governor, and pray his Honor would be pleased to order to be laid before the House a Copy of such Instruction or Instructions as he may have receiv'd for convening and holding this General Assembly at Harvard-College in *Cambridge*. And Mr. *Hancock*, Capt. *Sheaffe*, Mr. *Adams*, Major *Hawley*, and Col. *Worthington* were appointed.

Who afterwards returned and reported that they had deliver'd the Message to his Honor accordingly.

The same Day the Secretary came into the House with a Message from the Lieutenant Governor, as follows. -

Gentlemen of the House of Representatives,
*Y*OU have sent to me a verbal Message by a Committee, who have desired a Copy of my Instruction or Instructions relative to my convening the General Court at Harvard College. I have no Instruction for convening the Court at Harvard College, and I am willing to adjourn or prorogue it to any Part of the Town of Cambridge, where it can be accommodated.

My Orders are sufficient to convince me that it is his Majesty's Pleasure the Court should be held in Cambridge; but I am not at Liberty to lay a Copy of those Orders before the House, being restrained by a General Instruction, which requires me to make no Copies of Letters or Papers, from the Secretary of State, public, without special Leave first given me so to do. I take no Pleasure in refusing to comply with the Request of the House, but you will not expect me to do any Thing inconsistent with my Duty to the King.

Council-Chamber, Cam- T. HUTCHINSON.
 bridge, 5th June, 1770.

This Message was read; and the House then adjourn'd till To-Morrow Nine o'Clock.

On

On Wednesday June 6th, the Committee appointed to consider what is proper further to be done while the Assembly is held out of the Town-House in *Boston*, made Report: And after a long and full Debate, the House came into the following Resolutions, by a Majority of Ninety-six out of One Hundred and two Members present; and ordered the same to be entered on the Journal, viz.

IN and by an Act of this Province, made and passed in the Tenth Year of his late Majesty King William the Third, it is enacted, that the Writ to be at any Time thereafter issued by the Governor or Commander in Chief of the said Province, shall be in the Form following, viz.

William the Third by the Grace of God, of England, Scotland, France and Ireland, KING, Defender of the Faith, &c.

To our Sheriff or Marshall of our County
of S. within our Province of the
Massachusetts-Bay in New-England,
Greeting,

WE command, that upon Receipt hereof, you forthwith make out your Precept, directed unto the Selectmen of each respective Town, within your Precinct, requiring them to cause the Freeholders and other Inhabitants of their several Towns, duly qualified as in and by our Royal

Charter is directed, to assemble at such Time
 and Place as they shall appoint, to elect and de-
 pute one or more Persons (being Freeholders
 and resident in the same Town) according to
 the Number set and limited by an Act of the
 Great and General Court or Assembly of our
 aforesaid Province, to serve for and represent
 them respectively in a Great and General Court
 or Assembly by us appointed to be convened,
 held and kept for our Service ; AT THE TOWN-
 HOUSE IN BOSTON, upon the Day of
 next ensuing the Date of these Presents ; and to
 cause the Person or Persons so elected and de-
 puted by the major Part of the Electors present
 at such Election, to be timely notified and sum-
 moned by the Constable or Constables of such
 Town, to attend our Service in the said Great
 and General Court or Assembly on the Day a-
 above prefixed, by Nine in the Morning, and so
De Die in Diem, during their Session and Sessi-
 ons ; and to return the said Precepts with the
 Names of the Person or Persons so elected and
 deputed unto your self ; whereof you are to
 make Return, together with this Writ and of
 your Doings therein under your Hand into our
 Secretary's Office at *Boston*, one Day at the least
 before the said Court's sitting. Hereof you
 may not fail at your Peril. Witness and
 Commander in Chief in and over our Province
 of the Massachusetts-Bay aforesaid. Given at
Boston, under the publick Seal of our said Pro-
 vince

vince the Day of in the Year of
our Reign, Annoque Domini.

By Command of
J. A. Secretary.

Wherefore inasmuch as no other Writ could be issued for convening a General Assembly, and the Place where it should be convened, held and kept, was expressly declared in and by said Writ, to be *the Town-House in Boston*, it was the Opinion of the House of Representatives in the last Year, that the above-mentioned Act, by establishing that to be the Form of said Writ, had established the Town-House in Boston, as the only legal Place for convening, holding and keeping the General Assembly.

Nor was that a novel Construction of said Act, for in the Year 1721, under the Administration of Governor Shute, when the Small-Pox raged in the Town of Boston to such a Degree, as that the General Assembly could not be held there, without endangering the Lives of its Members, (for which Reason the three Branches of the Court were desirous of its being removed;) the two Houses refused to pass one Governmental Act out of the Town of Boston, untill they had passed a Resolve to make such Acts valid. To which Resolve his Majesty's Representative gave his Assent, and engaged on his Part, that the removing of the
Court

Court then, should not be drawn into Precedent for the removing the Court from Boston for the future.

It must be absurd to suppose, that the words "Town-House in Boston," were inserted in the Writ thro' Inadvertence. And thus much at least may certainly be inferred from their being inserted, that at the Time of enacting said Law, it was the common Understanding and Consent of all the Branches of the Court, that the Town House in Boston was the most proper and convenient Place for holding the General Assembly; and that it always would be held there, extraordinary Cases excepted.

Especially considering that the General Court had before by a perpetual Act of the 5th of William & Mary, made Provision for the upholding and repairing the Town-House in Boston, for the holding the General Assembly. And that it hath generally been the Understanding and Sense of the three Branches of the General Assembly ever since, that the Town-House in Boston was the established Place for holding the General Court, appears by their rebuilding with the Province Monies the Town-House in Boston, when it was consumed by Fire, and their procuring at Boston an elegant Mansion House for the Residence of the Commander in Chief, and by their repairing and upholding them for the same Purpose to this Day. But

But if it could be admitted that the above-mentioned Act of the Tenth of William is not conceived in such exprefs Terms as to abridge the King's Prerogative, and that the Right of affigning the Place for the fitting of the General Affembly ftill remains a Prerogative of the Crown, at the Difcretion of the Commander in Chief of this Province ; yet he can by no Means be juftified or excufed in holding the General Affembly out of the Town of Bofton, contrary to their Entreaties and Remonftances, to their manifefst Injury, and when no one good Purpofe can be ferved hereby.

The Prerogative is a difcretionary Power, in fome Inftances vefted in the King for the Good of the Subject ; it extends not to do an Injury for being created for the Benefit of the People ; it cannot be exerted to their Prejudice.—But the holding the General Affembly at Cambridge, is greatly prejudicial to the whole Province, as well as to the Members of the Court. It deprives the General Affembly of the Houfe provided for their Accommodation, and at the fame Time obliges us to be dependant upon the Owners of private Property for the Place of holding the Affembly.

It in a great Meafure deprives the Affembly of the Benefit of the public Offices and Records of the Province ; and thereby very much obftructs and retards the public Bufinefs.

It

It also in a great Degree prevents a Communication between the Members of the House of Representatives and their Constituents; and in many Cases at this critical Time, renders them unable to guide their Measures by the Sentiments of their Principals : And it is inconvenient to the Members, as they cannot be so well accommodated as in the Place where the Assembly has been wont to be held.

There have been some few Instances of the General Court's being held out of the Town of Boston; but they were all in extraordinary cases, when the Necessity of the Removal of the Court was notorious ; or when from some special Emergency, all were convinced of the Expediency of the Measure, and tacitly consenting to it, as in the Instance under the Administration of Governor Belcher—Excepting one Instance in the Year 1729, when Governor Burnet in a wanton and arbitrary Manner removed the Court to Salem ; evidently designing by that Constraint to force them to make a perpetual Establishment of the Governor's Salary, and thereby to relinquish an essential Right of the Commons of this Province : And he gave it as one Reason for his extraordinary Conduct, that “ the Inhabitants of Boston used Endeavors to work on the Minds of the Representatives to bring them to their way of thinking,” thereby insinuating that the Representatives

tives of the People ought not to be influenced by the Reasonings and Arguments of the People without Doors. But that arbitrary and injurious Removal of the General Assembly from its ancient Seat, favoring more of Despotism than a due Exertion of the Prerogative of a British Prince, will never be mentioned as a constitutional Precedent, by any Friend to the British Constitution, especially as the House of Representatives did then to their great Honor Remonstrate and Protest against it.

Wherefore, inasmuch as the General Assembly of this Province, notwithstanding the Intreaties, Remonstrances and Protest of the House of Representatives to the contrary, was the last Year continued at *Cambridge*: And now a new Assembly is convened; and against the Remonstrance of this House, to the great Inconvenience of its Members, and the Injury of the Province, without any Necessity, or the least Probability of serving one good Purpose, is constrained to hold the Session at *Cambridge*.

RESOLVED, as the Opinion of this House, that upon a Supposition that it still remains a Prerogative of the Crown, in the Discretion of the Commander in Chief of this Province, in any Case of Necessity or special Emergency, to remove the General Assembly out of the Town House in *Boston*, yet the convening and holding

Assembly in Cambridge is in this Instance a very great Grievance.

And as his Honor the Commander in Chief has not thought fit to communicate any Reason for the convening and holding this Assembly in *Cambridge*, but that he has been instructed by his Majesty so to do ; and being requested to lay before this House a Copy of such Instructions, he has declined. The House are utterly at a Loss to conceive any good Reason for thus convening and holding the Assembly here.

And as the Prerogatives of the Crown, however salutary when they are exerted for the Good of the People, have the most pernicious Tendency when exerted to their Prejudice, and such Exertions unchecked may overthrow the Constitution itself ; we cannot view the present Situation of the General Assembly in any other Light, than as truly alarming : And it is become our indispensable Duty, as the Guardians of the People's Rights, *now* to make a Constitutional Stand.

And as the former House of Assembly, rather than maintain any Controversy with the Lieutenant Governor, submitted to the Grievance, in Hopes that it would not be continued, but be speedily redressed : Yet inasmuch as the Prayers, Intreaties, Remonstrances and Protests of
this

this and the former House have hitherto effected no Relief ; and the proceeding to public Business at *Cambridge* may be construed as a tacit Submission, and may render abortive all future Endeavors to obtain a Redress of this Grievance :

RESOLVED, That notwithstanding there are Matters now lying before the Assembly of very great Importance, and which we are desirous of entering upon and compleating : Nevertheless, it is by no Means expedient to proceed to Business while the General Assembly is thus constrained to hold their Sessions out of the Town of *Boston*.

Therefore,

RESOLVED, That his Honor the Lieutenant Governor be Addressed to remove the General Assembly to its antient and usual Seat, the Town House in *Boston*.

The Names of the several Gentlemen both in Favor of, and against the foregoing Resolutions, are as follow, viz.

Y E A S.
Mr. Samuel Adams,
John Hancock, Esq;
John Adams, Esq;

Y E A S.	Captain William Heath
	Mr. Samuel How
	Mr. Benja. Wadsworth
D 2	Eben.

Y E A S.

Eben. Thayer, jun. Esq;
 Mr. Joshua Hearsay,
 Nathaniel Sumner, Esq;
 Mr. Moses Bullen,
 Mr. Jabez Fisher,
 Capt. Benjamin White,
 Capt. Elea. Kingsberry
 Mr. Hezekiah Gay,
 Capt. Jonathan Adams,
 Joshua Clap, Esq;
 Capt. Rich. Derby, jun.
 Mr. John Pickering, jun
 Dr. Samuel Holten,
 Capt. Michael Farley,
 Joseph Gerrish, Esq;
 Richard Reed, Esq;
 John Gallison, Esq;
 Mr. Ebenezer Burrill,
 Samuel Phillips, Esq;
 Capt. Henry Herrick,
 Humphrey Hobson, Esq;
 Caleb Cushing, Esq;
 Mr. Samuel Batcheller,
 Capt. Samuel Smith,
 Aaron Wood, Esq;
 Capt. Jonathan Barnard
 Capt. Daniel Thurston
 Mr. Thomas Gardner,
 Mr. John Remington,
 Mr. Oliver Richardson,

Y E A S.

Capt. James Barret,
 Capt. Abraham Fuller,
 Samuel Bancroft, Esq;
 Mr. Samuel Witt,
 William Stickney, Esq;
 Joseph Buckminster, Esq;
 William Reed, Esq;
 Mr. Simeon Spaulding,
 John Noyes, Esq;
 Capt. Eben. Harnden,
 Capt. Joseph Mellen,
 Capt. Jonas Dix,
 James Prescott, Esq;
 Joseph Hawley, Esq;
 Mr. John Dickenson,
 Mr. David Field,
 Mr. Tim. Danielson,
 James Warren, Esq;
 Mr. Gideon Vinal,
 Capt. J. Wadsworth,
 Capt. Anthony Thomas
 Capt. Edward Mitchel,
 Capt. Ebenezer Sprout,
 Mr. Samuel Sprague,
 Josiah Keen, Esq;
 Capt. Rob. Bradford,
 Capt. Woodbr. Brown,
 Mr. Stephen Nye,
 David Thatcher, Esq;
 Elisha Doan, Esq;

Mr.

Y E A S.	Y E A S.
Mr. Benja. Freeman,	Mr. Joshua Bigelow,
Mr. Joseph Doan,	Capt. Asa Whitcomb,
Daniel Leonard, Esq;	Mr. Edward Rawson,
George Godfrey, Esq;	Edward Davis, Esq;
Capt. Joseph Barney,	Capt. Henry King,
Mr. John Dagget,	Capt. Thomas Denny,
Col. Elnathan Walker,	Capt. Ste. Maynard,
Capt. Thomas Durfee,	Edward Hartwell, Esq;
Thomas Bragdon, Esq;	John Whitcomb, Esq;
John Wheelwright, Esq	Mr. Eph. Shearman,
Jeremiah Hill, Esq;	Mr. Ruggles Spooner,
Samuel Stanwood, Esq;	Jedediah Prebble, Esq;
Mr. Thomas Cook,	D. Ingersoll, jun. Esq;
James Athearn, Esq;	Capt. Charles Goodrich
Mr. Stephen Hufsey,	Capt. Isaac Searl.

*

N A Y S.	N A Y S.
Hon. J. Worthington Es	Mr. John Ingersoll,
Major Benjamin Day,	Hon. Tim. Ruggles Esq;
Mr. Elisha Porter,	Daniel Oliver, Esq;

It

* *Edward Sheaffe*, Esq; Commissary-General, and the Member for Charlestown, being necessarily absent from the House when the Resolutions pass'd, in a Letter to the Speaker declared his Mind in Favor of them; having fully considered the Matter while the Committee, of which he was one, was sitting.

It was then mov'd for a Committee to prepare an Address to his Honor the Lieutenant Governor, for the Removal of the General Assembly to the Town House in *Boston*. And Mr. *Samuel Adams*, *John Adams*, Esq; Mr. *Hancock*, Col. *Warren*, and Mr. *Leonard* were accordingly appointed.

Who the next Day reported a Draft; which was read and accepted by the House; and there-upon *Ordered*, That Mr. *Hancock*, Capt. *Darby*, *John Adams*, Esq; Brigadier *Prebble* and Col. *Warren*, wait on his Honor the Lieutenant Governor with the following Message, viz.

May it please your Honor,

THE House of Representatives have taken into their Consideration the State of the Province with Regard to the moving the General Assembly out of the Town of *Boston*; and by a Majority of Ninety-six out of One Hundred and two Members present, have Resolved, That the convening, holding and keeping the Great and General Court out of the said Town of *Boston*, to the manifest Injury of the Province, and the great Inconvenience of the Members of both Houses, without any Necessity, or the least Probability of serving any one good Purpose, notwithstanding the Prayers, Intreaties, Remonstrances and Protestations of this and the former House to the contrary, is a very great

great Grievance : And that it is by no Means expedient to proceed to Business while the General Assembly is thus constrained to hold their Sessions out of the Town of *Boston*. And as there are Matters now lying before the Assembly of very great Importance, which they are very desirous of entering upon and compleating, they humbly pray that your Honor would be pleased to remove the Great and General Court to its antient, usual and only convenient Seat, *the Town House in Boston*.

Major *Hawley* made a Motion, and it was thereupon *Ordered*, That the Resolves of the House pass'd Yesterday, together with the Message to the Lieutenant Governor, praying for the Removal of the General Assembly to the Town House in *Boston*, be sent up to the honorable Board : And that they be desired to take the Matter into their Consideration, and act thereon as to them shall seem meet. And the Resolves were accordingly sent up, with the said Message, by Mr. *Hancock*, *John Adams*, Esq; Col. *Warren*, Brigadier *Prebble*, and Capt. *Heath*.

The Secretary came into the House with a Message from the Lieutenant Governor, viz.

Gentlemen of the House of Representatives,

I Think it my Misfortune that so great a Majority of your House as Ninety-six in One Hundred

Hundred and two should appear to differ from me in Sentiment upon any public Measure. I have told you that I have not the least Doubt of the Legality of my adjourning or proroguing the Court to any Town in the Province. The Place as well as Time of its Meeting is left to the Governor.—The Governor is the Servant of the King, and by his Commission is to govern the Province according to the Charter and according to such Instructions as he shall from Time to Time receive from the King.—Without a Violation of my Instructions, I cannot now remove the Court from Cambridge to Boston : I am afraid of incurring his Majesty's Displeasure if I should do it. I am as sensible as you can be that there are many important Matters lying before the Court. I am sensible also that the Necessity of their being acted upon is so great, that even upon your own Principles, you may be as fully justified in proceeding to act upon them, as the House of the last Year could be justified for the Business they did, or as you will be able to justify yourselves for what you have already done the present Session. Does it not appear to you of Necessity that the Act of the Province which requires the Treasurer to issue his Warrant for levying a Tax of more than Eighty Thousand Pounds should be repealed in Part ? Will it be safe for you to leave Castle-William and Fort-Pownal without any Establishment ? Are you willing the Act for
Limitation

Limitation of Suits at Law, which has been repeatedly suspended, should now take Place? To omit the mention of many other Laws, which I believe you judge necessary to be continued or revived. Would you be willing the Enemies of our happy Constitution should have it in their Power to say that when the Governor had caused the General Court to be convened pursuant to the Powers reserved to him by the Charter, the House of Representatives refused to do Business because he had convened it at Cambridge, and, in their Opinion, without any Necessity or the least Probability of serving any good Purpose? Would not the Construction of my Conduct be, if I should carry you to *Boston* after this Message to me, that I had given up to the House of Representatives the Powers reserved by the Charter to the Crown?

In 1747 or in 1748, when the Court-House in *Boston* had been consumed by Fire, the major Part of the then House of Representatives was averse to Re-building it, and disposed to build a House for the General Court in some Town in the Country. Being then one of the Representatives of the Town of *Boston*, I used my Influence in every Way I could with Propriety in Favor of Re-building the Court-House in *Boston*, but finally could prevail thus far and no farther. The House upon the Question whether a Grant should be made for Re-building the Court-

E House

House in *Boston* was equally divided, and I being then Speaker of the House gave my casting Voice in Favour of the Town. I have still a very good Affection for the Town of *Boston*. I was then the Servant of the Town, and know I was acting the Mind of my Constituents. I am still satisfied that I did my Duty. I now consider myself as the Servant of the Crown. I know his Majesty's Pleasure, and I am doing my Duty in acting according to it, and if you should finally refuse to do Business at Cambridge, which I hope you will not, all the ill Consequences will be attributed to you and not to me.

Council-Chamber, Cam- T. HUTCHINSON.
bridge 7th June, 1770.

This Message was read, and the House immediately Adjourn'd till the next Day Ten o'Clock.

On Tuesday June 12, Major *Hawley*, Mr. *Samuel Adams*, Mr. *John Adams*, Mr. *Pickering*, Mr. *Leonard*, Capt. *Mitchel*, Capt. *Sumner*, Mr. *Hobson* and Capt. *Denny*, who had before been appointed a Committee for that Purpose, presented to the House the following Reasons for adhering to the Resolve of the 6th, viz. *That it was by no Means expedient to proceed to Business, while the General Assembly was thus constrained to hold the Session out of the Town of Boston* : And the same were read and accepted, and ordered to be entered on the Journal,
viz. At

AT present, the House wave any further Observations on the Legality of convening, holding and keeping the General Assembly out of the Town House in Boston. " The power of calling Parliaments in England, as to precise Time, Place and Duration, is an acknowledged Prerogative of the King ; but still it is with this Trust, that it shall be made Use of for the Good of the Nation, as the Exigency of the Times and Variety of Occasion shall require : " Wisdom and Goodness will always direct to such Places for them to assemble in, as shall be most subservient to the public Good, and best suit the Ends of Parliament. " Prerogative is a Power to act according to Discretion for the public Good : But when Mistake or Flattery have prevailed with weak Princes to make Use of this Power for private Ends of their own and not for the public Good, the People have, sometimes by express Laws got the Prerogative determined, in those Points wherein they found a Disadvantage from it.—It has been found by long Experience, that the Town House in Boston is the only convenient Place for the holding the General Assembly of the Province : No Alteration can therefore be made, unless some Occurrence of Times or Change of Affairs shall require it. Without these, the convening and holding the Assembly in any other Place, is a wanton Exercise of Power, which ought to be withstood ; a Grievance which ought to be re-

dressed. While Parliaments are duly cautious, they will for ever be watchful, lest a Power be exerted to the Injury of the Public, under the Pretext of Prerogative. Such is the Imperfection of human Nature, as to render discretionary Power, however necessary, always in a greater or less Degree dangerous ; and the Wickedness of Men has very often prompted them to make an ill Use of it. If it should be admitted that the Governor of this Province has still by Law the Power of convening, holding and keeping the General Court in any Town out of Boston ; yet the House have as clear a Right by Law to enquire into the Exercise of this Power, and to judge for themselves, whether it be wisely and beneficially, or imprudently and arbitrarily exercised ; And it is their Duty, as well as their Right, to remonstrate against all undue and oppressive Exertions of a legal, as much as against a Claim and Exercise of an usurped Prerogative. There are Prerogatives in the Crown, which may be exercised to the Destruction of the Constitution, and the Ruin of the People,

To consider more closely the Prerogative now claimed and exercised by the Lieutenant Governor. In one of his Messages to the House he says, " By the Charter the Governor has the sole Power of Adjourning and Proroguing the General Assembly ; there is no Limitation of Time or Place." And in another, " I have
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not the least Doubt of the Legality of my Adjourning & Proroguing the Court to any Town in the Province : the Place as well as Time of its Meeting is left to the Governor." Admitting this to be true, it is in the Power of the Governor to carry the Assembly from one extreme Part of the Province to another, adjourning them from Place to Place, till the Year expires, or perhaps till he shall have worried them into a Compliance with some arbitrary Mandate, to the Ruin of their own and their Constituents Liberties. If this would be legal, it would be attended with Consequences as fatal as if it were illegal : None therefore can Doubt but it would be the Duty of the two Houses firmly and earnestly to remonstrate against it—to make a Stand if their Remonstrances should prove ineffectual, and refuse to attend him in his absurd Career. The Supposition now made, is only carrying the Doctrine to its just and necessary Consequences. The present Case is the same in Kind, tho' not in Degree : The Assembly is removed from its ancient, usual and only convenient Place—This may be the first Stage in an intended Circuit—without one Reason assigned, or any good one conceiveable by this House : Indeed we are told, it is in Obedience to Instructions ; but we are not to be indulged with a Sight of such Instructions. The Lieutenant Governor has expressly said, that he is restrained from making a Copy of them public. Such a Severity has awakened
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and fixed our Attention : It is indeed alarming ; for it is not usual for a well-advised Prince to with-hold from his Subjects the Grounds he may have for the Exercise of a Prerogative which regards only the Administration of the Civil Government.

His Honor is pleased to say, that he cannot remove the Court to Boston, without a Violation of those Instructions : But as it is impossible for any Man, more especially at the Distance of three Thousand Miles, to foresee the fittest Place for holding the Assembly, or the Emergencies which may render it impracticable for it to be held in any particular Place, it is rather to be supposed he is mistaken when he apprehends such Instructions to be indispensable. And as he further says, that by his Commission he is to govern the Province according to the Charter, as well as according to such Instructions as he shall from Time to Time receive, it is natural to conclude, that he is still left to act with his own Discretion ; and that when Circumstances take Place to render it impossible, consistent with the public Good, that the Assembly should meet at one certain Place, or more eligible for it to be held in any other, he may act his own Judgment therein ; especially considering that by the Charter he is expressly vested with the Power of Adjourning and Proroguing the General Assembly, as he shall from Time to Time judge necessary.

cessary. But if there be such peremptory and absolute Instructions, we have Reason to conclude, that the Ministry thereby intended to insult the General Assembly, and make them meanly compliant for Time to come—Past Experience serves to increase this Apprehension ; the Assembly the last Year suffered the greatest Indignity, surrounded while Sitting, by a military Guard, with Cannon at their Doors to affront or awe them ; and when they remonstrated the high Breach of their Privilege, they, and not the Soldiers, were made to give Way. Can Freedom and Dignity then exist in an Assembly that can tamely brook such Usage ? Would it not be a betraying the Constitution, and the Rights of this Assembly, to proceed to Business, while we are thus constrained to hold the Session here ? Besides, is there nothing further to apprehend ? If the Assembly should in this Situation proceed to do Business, act uprightly, and according to their Consciences, and thereby give further Umbrage to a despotic Minister ; may they not expect to be conven'd, held and kept in a State still more humiliating & disgraceful, until they shall become sufficiently ductile and obsequious ? Indeed we cannot find that ever a Parliament was prorogued in England, or summoned to any Place, for the Sake of punishing the Members, or putting them to any Inconvenience : This is not the Method of managing an English Parliament.—They have sometimes even refused to
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be Dissolved, till they have done the Business of the Nation; and at other Times they have declined to obey the Summons of the King by his Writ to attend, when called for a Purpose they disliked, and to a Place where they tho't they should be under any Awe or Restraint. As particularly in the 28th of Henry VI. when it was resolved that the Conduct of the Duke of Suffolk should undergo a National Inquiry. "The Queen, apprehensive of the Danger her Favourite was in, from such a Procedure, did all she could to prevent it; first, by endeavoring to hinder a Parliament from being called; and next, when she could not avoid that, by having it summoned to meet at Leicester; where in a Country Town, she imagined her numerous Attendants might overawe the Members. But the Lords and Commons, who knew they were safe under the Protection of the City of London, positively refused to meet at all, unless they were appointed to come to Westminster."

His Honor mentions, as the House had done before, the important Matters lying before the Court, and the Necessity of their being acted upon: But these important Matters may to much better Purpose, as well as with greater Convenience, be acted upon in the Town House in Boston, where the Records of the Province are kept: And besides, the greater the Importance of the Business is, the stronger is the Reason,

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son, why the Assembly should act upon it in the Metropolis ; where there is usually a Concourſe of the People from all Parts of the Province, whoſe Reasonings and Arguments upon Matters of public Importance, ought forever to be regarded. Wiſe Parliaments have always reap'd great Advantage from the Wiſdom of the People without Doors ; and have frequently been adjourn'd to a diſtant Time, when ſuch Matters have been bro't on, that they might have the Opportunity of conſulting their Conſtituents.

His Honor in his Meſſage has introduced an Anecdote, concerning his own Conduct, when Speaker of the Houſe in 1747 or 1748, but to what Purpoſe is not eaſy to diſcover, or conceive. He ſeems to inſinuate without affirming, that his own Judgment, then was and ſtill is, in Favor of the Sentiments of the preſent Houſe, that the Town-Houſe in Boſton is the moſt convenient Seat of Government : But if this was not his Meaning, his Conduct at that Time, whether it proceeded from his own Opinion, or was meerly in Compliance with the Minds of his Conſtituents, which he has been pleaſed to leave ambiguous, (as he has whether his preſent Conduct, is meerly in Obedience to Inſtructions, againſt his own Judgment, or whether, his own Judgment is conformable to his Inſtructions), is a full Juſtification of the Houſe, as far as his Ho-

nor's Example can justify them ; for the House are well assured, that the Minds of their Constituents at this Day are, that the Seat of Government should be in Boston, and not elsewhere.

Another Insinuation in his Honor's Message is, that heretofore the Province has been doubtful whether Boston was the most convenient Seat of Government or not.

But we have great Reason to question, whether one Half or one Quarter of the Province ever thought in Earnest of building a State-House out of Boston ; notwithstanding the Division of the House in 1747 or 1748, upon the Question, whether a Grant should be made for re-building the Town-House in Boston, or not. The Diversity of Opinions upon the Question in the House at that Time, arose, as we conceive, from a Concurrence of many other Causes, which we have not Time now to enumerate ; and the party who were against the Grant, were most of them as we have Reason to believe, against it from other particular Views, Motives and Designs, not from any Opinion that Boston was not the best seat of Government. But had the House then been fully for removing the Seat of Government into the Country, we are convinced that many alarming Events and Occurrences have happened since that Time, which have placed the Expediency,
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if not the necessity, of holding the General Court in Boston, beyond all Dispute.

We are also told, that “ we may be as fully justified, even on our own Principles, in proceeding to act upon these Matters of public Importance, as the House of the last Year could be justified for the Business *they* did, or, as we shall be able to justify ourselves by what we have already done the present Session.” Thus we find one Instance of a Compliance of a former House, makes Way for a new Demand : The last House submitted to all the Inconvenience and Hardships to themselves, and Injuries to the Province, which arose by their sitting at Cambridge ; and their Condescension is now quoted as a Precedent, and an Argument for our submitting to the Grievance also. This certainly affords a good Reason for the House to adhere to their Resolution, to prevent the Establishment of such a Precedent. Besides, the former House yielded to it, conceiving it as only a temporary Evil ; but now there is great Reason to apprehend a fixed Design, either entirely to change the Seat of Government, or by moving the Assembly from Place to Place, to harass and bring them into a Compliance with arbitrary and despotic Purposes.—With Regard to the Business we have already done, “ the present Session”, namely the Election of Councillors, the House are of Opinion, that they can fully

justify themselves therein consistent with this Resolution. The Councillors are to be elected according to the Terms of the Charter, " yearly once in every Year"; and it has been the invariable Usage, as it has been thought to be agreeable to the Spirit of the Charter, to proceed to that Business on the last Wednesday in May : The House therefore proceeded to it on that Day, tho' with great Precaution, that " the Enemies of our Constitution", who are sedulous to take all Advantages against it, might not " have it in their Power to say", that by an Omission we had forfeited our invaluable Charter. It was therefore viewed as of absolute Necessity, to enter upon that Business at that Time, tho' it could not be done in the ancient and proper Place of holding the General Assembly. But no Business now before us can be of such absolute Necessity, as that the omitting it will endanger the Constitution : On the contrary, the Danger to the Constitution now lies in proceeding to Business under the present Grievance ; and therefore we do our Duty, finally to refuse to proceed to Business in Cambridge ; as judging it the least likely to be attended with ill Consequences to ourselves, our Constituents and Posterity.

It is further to be observed, that the House have no other Power or Check whereby to restrain the undue Exercise or Abuse of the Privilege.

rogative. It is presum'd, that the Commons ought to be as free and independent as any other Part of the Legislature ; because the democratical Branch is at least as important to the People and the Constitution as the monarchical or aristocratical : and they have at least as clear a Right to judge of the proper Time for them to do their Part of the Business of the Province, as the Governor has to judge of his—The Governors of the Province have of late Years refus'd to consent to any Act or Business whatever, untill they have had a Grant for their Support ; and for this they have pleaded an Instruction: Here therefore is an Example of a Resolution in the King's Ministers and Servants, that no Business shall be done untill the People shall exert their Prerogative in a Manner agreeable to the Crown : And the Prerogative of the People to grant Money in their own Time, to raise it in their own Way, and by their own Means, and to appropriate it for such Purposes as they shall judge proper, is surely much clearer and more indisputable, than that of the Governor of the Province to convene and hold the General Assembly in any other Place beside the Town House in Boston.

His Honor has been pleas'd to mention divers Matters to be acted upon, which we readily acknowledge are necessary and important ; and it is still our earnest Desire to proceed to the Consideration

sideration of them without any unnecessary Delay.—The further Suspension of the Act for Limitation of Law-suits, and a proper Establishment for Castle William and Fort Pownal, demand our Attention ; and the repealing in Part the Act which requires the Treasurer to issue his Warrants for levying a Tax of more than Eighty Thousand Pounds, is of particular Importance at this Time, when the Embarrassments of the Trade, and other grievous Hardships the People are made to suffer, would render it difficult for them to bear so great a Burden : But we have notwithstanding Reason to believe, that they had much rather be subject even to the immediate Payment of that whole Sum, distressing as it would be, than to concede to so pernicious a Precedent ; and to have the General Assembly hereafter controul'd by the Mandates of a Minister, and made to submit to Measures which will be much more injurious to them, and dangerous to Posterity. If therefore his Honor should finally refuse to remove the Assembly to the Town-House in Boston, (which we hope he will not) while there can be no Necessity for holding us here, the World will judge to whom all the ill Consequences of it must be attributed.

A fair Copy of the foregoing was sent up to the Council Board, by Mr. *Hancock*, Major *Reed* of *Marblehead*, Mr. *Wood* of *Boxford*, Capt. *Heath*, and Capt. *Fuller*.

And

And on Wednesday June 13, *Royall Tyler, Joshua Henshaw and James Humphrey, Esqrs;* came down from the Honorable Board and laid on the Table a Copy of their Address to the Lieutenant Governor, *viz.*

To the Honorable THOMAS HUTCHINSON, Esq; Lieutenant-Governor and Commander in Chief of the Province of the Massachusetts-Bay.

The ADDRESS of his Majesty's Council of the said Province.

May it please your Honor,

IT would give us great Pleasure to proceed upon the public Business agreeable to the Recommendation in your Honor's Speech, at the opening of the present Session: But as in Consequence of a Motion made in Council, that your Honor should be requested to adjourn the General Court to Boston, you informed the Board you could not do it consistent with your Instructions, it is first incumbent on us to observe, that the Province Charter ordains "that the Governor for the Time being shall have *full Power and Authority*, from Time to Time, *as he shall judge necessary*, to Adjourn, Prorogue and Dissolve the Great and General Court."— This Power is a full Power: it is wholly in the Governor; and to be exercised as he shall judge necessary. It cannot therefore be subject to the

Controul

Controul of Instructions. Such a Power and such a Subjection of it are incompatible. The Moment it is so subjected, it ceases to be a full Power ; and the Governor is no longer the Judge with Regard to the Exercise of it. It is therefore a palpable Contradiction to suppose it under such a Controul : and in Fact (judging of it by the Charter only) it is controulable by nothing but the Convenience and Safety of the General Court, and the general Utility of the Province. For those Ends that Power was lodged by the Crown, exclusive of itself, in the Governor solely.—It is true that no mention is made of the Place of such Adjournment or Prorogation : The same is also true as to Time : but they are both necessarily included in the Idea of Adjourning and Proroguing : and if these last be wholly and exclusively in the Governor, which is very evident, the Time and Place must be also.

There is nothing absurd or unreasonable in this Construction of the above-cited Clause of the Charter : for it is impossible in the Nature of Things, that the Crown at the Distance of a Thousand Leagues, should be able understandingly, and with a Knowledge of present Circumstances, upon which the Fitness of such a Measure depends, to exert that Power.—It is therefore fit and necessary that such exclusive Power should be vested in its Representatives here.

And

And the said Clause does in Fact make such an Investiture.

It cannot be said, that " this sole Power is intended for no other Purpose than to exclude both the other Branches of the Court from any Share in it," because there is not a Word in the Charter, that even intimates such an Intention : And because the Clause giving the Power is expressed in Terms vesting that Power solely and exclusively in the Governor.

With Regard to the convening the General Court, the Charter ordains and grants, " that there shall and may be convened, held and kept by the Governor for the Time being, upon every last Wednesday in the Month of May, every Year forever, and at all such other Times as the Governor shall think fit and appoint, a Great and General Court."

The Time of convening in May is fixt, and therefore not alterable by Instructions. Other Times of convening are to be such as the Governor shall think fit. He is made the Judge of the Fitness of such other Times : which therefore in Regard to Time excludes the Controul of Instructions. As to Place although the Charter be silent, the convening must have Relation to Place as well as Time : the Right of judging of the latter, implies the same Right in

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Respect to the former : and the Reasons for both are the same, as well as for the Adjourning, Proroguing and Dissolving the Court, which 'tis evident are exclusively in the Governor. The Power is the same as to all those Particulars ; and it is fit it should be so : for the Governor being in the Province must have the best Opportunities of knowing what the general Convenience, Safety and Utility require : it must be reasonable therefore to suppose, that such an exclusive Power was intended by the Charter to be lodged in him ; and in Fact it is by the said Clauses very perspicuously so lodged, —Hence it is (admitting the Act for establishing the Form of the Writ for calling a General Court to be out of the Question) that after long Experience had determined Boston to be the most convenient and fit Place for the Meeting of the General Court, all the Governors of the Province, except Mr. Burnet, from the Date of the Charter to the last Year, have convened the General Court at Boston, excepting in a few Cases, wherein the Safety of the General Court, or the public Utility made it proper to convene the Court elsewhere : And in those Cases the Removals of the Court were justified by the respective Reasons for them. “ The Power of calling Parliaments in England, as to precise Time, Place and Duration, is certainly a Prerogative of the King, but still with this Trust, that it shall be made Use of for the Good of the Nation,

Nation, as the Exigencies of the Times and Variety of Occasions shall require." The Power of calling the General Court, in like Manner for the Good of the Province, is by the Charter vested in the Governor for the Time being. But considering the several Acts of the General Court, whereby a Court-House, which has been several Times Re-built for accommodating the General Court, and a commodious and elegant Dwelling-House and other Accommodations for the Residence of the King's Governor, have been provided at Boston at a great public Expence——Considering also the Act "for Establishing the Form of the Writ and Precept for calling a Great and General Court," whereby it appears, that in the Writ, Precept and Return, the Town-House in Boston is mentioned to be the Place, where the General Court is appointed to be convened, held and kept—The Proceedings also of Governor Shute and the Assembly in 1721, whereby it appears the Governor declared, that the Adjournment from Boston should not be drawn into Precedent ; and a Resolve was passed by the whole Court, validating and confirming the Acts of that Court : Which Proceedings clearly manifest their Apprehension that Boston was the Place established by Law for the Governor's convening and holding the General Court—When these Acts are considered, if they do not amount to a strictly legal Establishment of the Place of convening and holding the Ge-

neral Court, they at least furnish (in our humble Opinion) a Rule by which the Governor ought to conduct himself in that Regard ; and from which he may not depart, but in Cases of Exigency.

When Exigencies happen, of which every one can judge, they afford a sufficient Reason for deviating from the Rule, and the Deviation will not nor can be complained of.

Governor Burnet's conduct in convening the General Court out of Boston, cannot be deemed an acknowledged or constitutional Precedent to justify a similar Conduct : because it was not acquiesced in, but remonstrated against, by the House of Representatives : and because it was not founded on the only Reason, on which the Prerogative of the Crown can be justly founded, the Good of the Community.

In Governor Belcher's Time, when in Consequence of Instructions he removed the General Court to Salisbury, the Removal was " for the more convenient carrying into Execution a Commission for settling the Line between this Province and New-Hampshire."

Here Convenience was the Reason for the Removal. It was convenient that the Assemblies of both Provinces, which were then under the Administration

Administration of the same Governor, should be as near each other as might be, for effecting the Settlement of the Line between the two Provinces : And it was not only convenient, but the general Good of both required such a Settlement.

So long as Prerogative is exercised for the real Good of the Community, which the Community must feel, and will always acknowledge, it is seldom examined, whether that Exercise be strictly legal or not : But that Omission does not take away the Right of examining, whenever Prerogative is exercised for a different Purpose.

In the present Case, when every Reason, arising from Convenience, Safety and Utility, demonstrates and urges the fitness of the Court's sitting in Boston, the convening and keeping it elsewhere, contrary to the Mind of the Two Houses, and the Province in general, we humbly apprehend is an exercise of the Prerogative, if not against Law, yet certainly against ancient Usage, and unwarranted by the Reason which supports all Prerogative, namely the public Good.

We are sensible " the Governor is Servant of the King, and by his Commission is to govern the Province according to Charter, and according

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ing to such Instructions as he shall from Time to Time receive from the King." Those Instructions however must be understood to be such as do not militate with, or in any Degree vacate, the Charter, otherwise the Charter would be annihilable at Pleasure : From whence it would follow, that it neither was, nor is in the Power of the Crown to grant any Charter whatever, vesting in the Grantees any durable Privileges, much less such as are granted by the Charter of this Province, which are perpetual. But we hold it to be clear Law, that the Crown had and hath such a Power : And it is equally clear, that their late Majesties King William and Queen Mary for themselves, their Heirs and Successors did, by their Charter, in the third Year of their Reign, grant to the Inhabitants of this Province, and to their Successors thenceforth forever, all the Powers and Privileges in the said Charter mentioned : One of which is, that the Governor for the Time being shall convene, adjourn, prorogue, and dissolve the General Court, as in the two Clauses above quoted : Which Clauses for the Reasons aforesaid, we humbly apprehend vest in the Governor for the Benefit of the said Inhabitants an exclusive Right for those Purposes : and therefore that no Instructions can supercede or controul that Right, which is a beneficiary Grant to the People, without injuring them, and so far vacating the Charter.—Your Honor has observed very justly " that his Majesty

jeſty never intended his Inſtructions ſhould ſupercede or controul the Law." This is and muſt be true alſo with reſpect to the Charter : Becauſe it is the great Law of the Conſtitution, and is the Foundation of all the Laws of the Province, and becauſe his Maſteſty is juſt ; has a paternal Affection for his People ; and never intended his Inſtructions ſhould ſubject them to any unneceſſary Inconvenience, much leſs infringe their Rights.

WE therefore earneſtly requeſt, that for his Maſteſty's Service, the Eaſe and Happineſs of your Honor's Adminiſtration, the Convenience of the General Court, the Utility and Satisfaction of the Province in general, in Purſuance of the Intention and Spirit of divers Acts and Laws of the Province, purſuant to the Uſage (under both Charters) of more than a Hundred Years ſtanding, but more eſpecially purſuant to the full and excluſive Powers veſted in the Governor by the preſent Charter, your Honor will pleaſe to adjourn or prorogue the Great and General Court to its ancient and conſtitutional Place, the Town-Houſe in Boſton.

On Friday the 15th, *William Brattle, Royall Tyler*, and *James Pitts*, Eſqrs ; brought down from the Council Board a Copy of His Honor's Answer to their Addreſs, and laid the ſame upon the Table, viz.

Gentlemen

Gentlemen of the Council,

YOU seem, as far as I can collect from your Address, to decline proceeding in your Legislative Capacity upon the public Business. You have expressed your Sense in very strong Terms that I ought not to have caused the General Court to convene at Cambridge in Consequence of Instructions, and that it is very necessary to the public Good that it should be convened at Boston.

I have "thought fit and have appointed" that the General Court should convene at Cambridge. I have done no more than what the Charter authorizes me to do. If I have done it, meerly in Consequence of Instructions and from a Sense of my Obligation to what appears to me to be his Majesty's Pleasure, I shall notwithstanding be justified; for the Crown neither by Charter nor in any other Way, hath ever divested itself of the Right of Instructing the Governor in what Manner this Power, delegated to him shall be exercised. The Practice of giving Instructions, which began with the Charter and which has continued near fourscore Years, I think should have been sufficient to prevent the Council from taking Exception to them.

If, without Regard to any Signification of his Majesty's Pleasure, I had in my own Judgment
thought

thought it fit and necessary that the Court should be convened at Cambridge, it would, now, be to no Purpose for me to tell you so; for although you admit it to be a Part of the Prerogative that I should convene the Court at such Time and Place as I judge it to be most fit, yet you have a Reserve, for you have explained away all the Prerogative and removed it from the King and his Representative, and made yourselves and the People the Judges when it shall be exercised, & in the present Case have determined that it is not fit it should be exercised.

I will not engage in a Dispute with you upon these Points. I think it enough for me to tell you, that I have not the least Doubt of the Right of the Crown to controul the Governor by Instructions or other Signification of the Royal Pleasure; that I believe it to be for the Benefit of the People, that a Governor should be under this Controul; that the present Set of Instructions for the Governors of this Province, are wisely framed for the Advantage of the Province; that I have no Instructions, at present, nor have I Reason to expect any, militating with the Charter, nor with any Law of the Province. I must therefore adhere to them.

As his Majesty's Council for the Province, I shall consult you upon every Occasion; and your Advice will have great Weight with me: But

I must finally judge for myself, of the Fitness and Expediency of exercising the Powers devolved upon me, by Virtue of my Commission.

I am not able to comply with your Request, to Adjourn or Prorogue the Court to Boston. I therefore earnestly recommend to you, to proceed without further Delay, upon the public Business of the Province.

T. HUTCHINSON.

Cambridge, 15 June, 1770.

This Message being read in the House, it was mov'd for a Committee to prepare an Address to the Lieutenant Governor, setting forth, that as this House cannot recede from their Resolution, not to proceed to Business out of the Town-House in *Boston*, they apprehend it can be to no good Purpose for the General Assembly to be still kept in *Cambridge*: And praying that his Honor, if he is yet determined not to remove the Assembly to *Boston*, agreeable to the Request of both Houses, would be pleas'd to give them Leave to retire to their several Homes. And Mr. Speaker, Major *Hawley*, Mr. *Samuel Adams*, Capt. *Sheaffe* and *John Adams*, Esq; were accordingly appointed.

The said Committee made Report, which was read and accepted: And thereupon it was ordered, That Mr. *Hancock*, Mr. *Sam. Adams*, Capt. *Brown*, *John Adams*, Esq; and Mr. *Ingersol* of *Sheffield*,
wait

wait on the Lieutenant Governor with the following Message from the House, viz.

May it please your Honor.

THE House of Representatives beg Leave to remind your Honor, that by their Message of the 7th Instant they made known to you their Resolution, that it was not expedient for them to proceed to Business out of their ancient, usual, and only convenient Place the Town House in Boston; and pray'd your Honor would be pleas'd to remove this General Assembly to that Place—Your Honor in Answer, was pleas'd to express your Hopes, that we would not finally refuse to do Business in Cambridge. We therefore take this Opportunity to assure you, that having had further Time maturely to consider the Matter, we are still determined to abide by the Resolution, and are ready to answer for all the ill Consequences that can be attributed to us. Surely you cannot think it for the Honor of the House, without any declared or conceivable Reason, to be kept here dependent upon private Persons even for Shelter, in a Manner deforc'd from the House provided and established for the Assembly, at a great Expence to the People, which now stands entirely useless and solitary.

We again in Duty to his Majesty, and in Faithfulness to our Constituents, make a Tender of

ourselves, as ready to transact the public Business ; provided your Honor will remove us to the aforesaid antient and established Seat of Government.

If you are still determined not to gratify the Request of the two Houses, in removing the Assembly there, you will please to consider, whether it will tend to the Cultivation of that Harmony in the Legislature which all good Men desire, to continue us sitting——The Members of this House unwilling that their Constituents should be put to an unnecessary Expence, are desirous of Leave to retire to their several Homes.

And on Saturday the 16th, his Honor was pleased to send the following Message to the House, viz.

Gentlemen of the House of Representatives,

I Have Reason to expect, every Day, Letters from His Majesty's Secretary of State, and it appears to me probable that they may contain Matters of Importance to the Government. I therefore think it necessary the Court should continue sitting some Time longer, that I may have an Opportunity of communicating them so far as I may be required or allowed to do it.

Cambridge, 15 June, 1770.

T. HUTCHINSON.

Tuesday

Tuesday June 19, *James Otis, John Bradbury and James Pitts, Esqrs;* a Committee of the Council, came into the House, and laid on the Table a Copy of a Message of the honorable Board to His Honor the Lieutenant Governor, *viz.*

May it please your Honor,

WE have attentively considered your Honor's Message in answer to our Address; and we beg leave to make a few observations upon it.

The Charter of the Province, as it creates and defines the Powers of its Governor, is the only rule (where the Province Law is silent) by which to judge of those powers. It is a compact between the Crown and this People to be mutually observed and kept. There is no reservation in it that Instructions shall be a rule of Government to the Governor: No Instructions therefore can be a rule to him in Cases, wherein they alter those Powers, or in any other way affect the Charter. This inference we apprehend your Honor will allow to be just in general: And we think you will allow it to be just also, with regard to the Governor's power of adjourning, proroguing, and dissolving the General Court: For although we particularly quote the clause of the Charter that relates to that power, and
have

have delivered our sentiments pretty fully upon it ; and it appears clearly, that it vests in the Governor an exclusive right to exercise that power, yet your Honor wholly confines your observations to the power of convening the General Court ; which induces us to think you are satisfied the Governor has an exclusive right relative to the Adjourning and Proroguing ; and consequently that it is not controulable by Instructions. It is therefore needless, with regard to the power of convening the Court, to say any thing concerning it, in addition to what we have said in our Address, as the object of our present desire is, that you would please to Adjourn or Prorogue the Court to Boston.

Your Honor is pleased to tell us “ that the practice of giving instructions, which began with the Charter, and has continued near fourscore years, should have been sufficient to prevent the Council from taking exception to them.”----Our Address furnished no occasion for this observation ; for the Instructions therein referred to, were not Instructions in general, but such only as we apprehended militated with the Charter. On such Instructions, when made the rule of Government, it is the duty of the Council, in a becoming manner to signify their mind, even though such Instructions had begun with the Charter,

ter, and been continued to the present time : And such a signification of their mind, we humbly apprehend, can never subject the Council to his Majesty's displeasure.

Your Honor informs us, that “ although we *admit* it to be a part of the Prerogative, that you should convene the Court at such *time* and place as you *judge fit*, yet we have a *reserve*, for we have *explained away* all the Prerogative ; *removed* it from the King and his Representative, and *made ourselves* and the People the judges when it shall be exercised ; and in the present case have determined, that it is not fit it should be exercised.”

We wish your Honor had quoted the clauses, on which you ground the several declarations contained in the foregoing Paragraph : Had this been done you would not have found that they justified all of them. We do *not admit* the Convening of the Court on *the last Wednesday* of May yearly, to be a part of the Prerogative in such a sense as to make the Convening of it on that day doubtful.--- We have made *no reserve* but what is warranted by the Charter ; by several Laws of the Province ; by ancient usage ; and the nature, end, and design of the Institution.---- We have *not explained away* all the Prerogative, or any part of it, but shewn in the first
place

place what it is according to the Charter ; and in the next, that those Laws with certain proceedings of the General Court, “ if they do not amount to a strictly legal establishment of the place of convening and holding the General Court, at least furnish (in our humble opinion) a rule by which the Governor ought to conduct himself ; and from which he may not depart but in cases of exigency.”---We have *not removed* the Prerogative from the King and his Representative, but on the contrary shewn, that it has been vested by the King in his Representative, to be exercised for the good of the People, which is the great end of Prerogative.----We have *not made ourselves* and the People, either jointly or severally, the Judges when it shall be exercised : But on the contrary, in the fullest and most express manner, have declared it to be exercised as the King’s Representative shall *judge fit*, consistent with the rule aforesaid. But if there were no such Rule to guide his Judgment, He would not be lawless in this Case, nor could make meer Will and Pleasure the Rule (if they can be called a rule) of his judging : For, by the very terms, and by the reason which ought to influence all his determinations, there is to be a *fitness* in his judging ; a fitness, arising from convenience, safety, and utility, agreeable to which it would be his duty to act ; and therefore although we have

have given our opinion what the General convenience and utility require, and that in the present case they require the removal of the General Court to Boston, yet we have not made ourselves nor the People the judges in this matter, but on the contrary have declared in the Address, to which your message is an Answer, that the Governor of the Province is the sole judge. And therefore as we would not suppose your Honor has designedly misrepresented our Address, you will give us leave to say you have greatly mistaken it.

We are sorry to have reason to say, that in this Clause of the Message there is discoverable, not only a disposition unkind and unfriendly to the Council, but a want of Candor and Justice.

Is it kind or friendly, does it consist with Candor and Justice to represent, that we first admit the Convening of the Court to be part of the Prerogative fully vested in the Governor ; that we then make reserves concerning it ; that we explain it wholly away ; that we remove it from the King and his Representative ; and that we make ourselves and the People the Judges when it shall be exercised ?

If your Honor intended to bring upon the Council the displeasure of his Majesty, and in consequence of it, procure an alteration of its

constitution, you could not do it more effectually than by such a representation : But on examining, it will be evident, that there is no foundation for it, either in the Address, or in any other act of the Council ; and therefore such a representation is not only unkind and unjust to the Council, but, if we had let it pass unnoticed, might have proved injurious to the Charter Rights of the Province.

It is with regret we make these observations, but we are constrained to it by the Justice due to ourselves ; and by the Claim the Province has upon us to defend the Constitution of its Government.----We have the warmest sentiments of duty and loyalty to his Majesty, which will stimulate us, on the one hand to defend the just Prerogative of the Crown ; and on the other, to promote as far as we can, the end and design of such Prerogative, the good of the People.

As your Honor has not condescended to give the Board the reasons, on which you ground your opinion concerning the efficacy of Instructions to controul the Governor's power of convening the General Court---as you are wholly silent about his Power of Adjourning and Proroguing the Court : and have not pointed out the insufficiency of the reasons, by which we have endeavoured to support our own opinion on those points, we are under a
necessity

necessity, till we have further light to continue in the same opinion.

In the mean time, we beg leave to offer a few observations on the remaining part of your Honor's Message. It informs us you "will not engage in a dispute with us upon these points ; that you think it *enough for you to tell us*, that you have not the least doubt of the right of the Crown to controul the Governor by Instructions, or other Signification of the Royal Pleasure ; and that you believe it to be for the benefit of the People, that the Governor should be under this controul."

As we are not inclined to be exceptious, we will not suppose your Honor intended to intimate here your own superiority ; or that it would be too great a condescension in you and below your dignity to discuss this subject with the Council, We shall therefore only observe that if you have no doubt of the right of the Crown to controul the Governor by Instructions, you can have no doubt of your own right, not only of convening the Court at Cambridge, and holding it here contrary to the prayers of both Houses, and all the reasons offered by them ; but (in case you had been so Instructed) of refusing to convene it at all, either on the last Wednesday of May yearly as required by the Charter, or at any other time :

Nor can you in the same case doubt of your right to dissolve the Charter wholly, and with it the present form of Government, and to introduce any other. These are necessary consequences of the Doctrine delivered in your Honor's Message. It is therefore a Doctrine inconsistent with every idea of English Government; and utterly subversive of the ends of all Government: And it puts the Property, Liberties, and Rights of the People of this Province on a very precarious foundation, or rather destroys the foundation intirely.---We cannot see how it can be "for the benefit of the People, that a Governor should be under this controul"---the controul of Instructions, that in their nature and consequences may prove so ruinous to the People. But as we would hope your Honor does not entertain principles of such a tendency, we suppose you must have meant such Instructions only, as were consistent with the Charter, and the Rights and Privileges of Englishmen.

Your Message further declares, "that the present set of Instructions for the Governors of this Province are wisely framed for the advantage of the Province."—You are pleased here to express your intire approbation of the Instructions you have received: one of which, we have been made to understand is, that the General Court shall be held in the Town of Cambridge.

Till

Till this Declaration we pleased ourselves with the thought, that you were sincerely desirous (had it consisted with your Instructions) that the Court should be removed to Boston : But how can it be supposed your Honor can desire that this Removal should take place, the direct contrary to which you have by fair Implication declared, is for the advantage of the Province ? That advantage however can never appear, if the Instructions, which are the only evidence of it, be kept secret.

If Instructions are to be the Law and Rule of Government, is it not fit and proper, that they should be known ? Are we not otherwise, not only in a state of Vassalage, but distinguished from others in that state in this essential circumstance, that they have a known Law, which they might obey ; and we an unknown one, which for that reason we can neither obey, nor disobey, and yet may possibly be punished for not obeying.

Your Honor tells us “ you have no Instructions militating with the Charter.”—If there be an Instruction forbidding the Adjourning or Proroguing the General Court to Boston, we apprehend it does militate with the Charter : and we think we have in our address clearly proved from the Charter, that it does so militate : In which case we submit it to your Honor’s Consideration,

consideration, whether you can be held to observe it.

Whenever your Honor shall think proper to consult the Council upon any Occasion, you may depend on our best advice for his Majesty's service, and the good of the Province. These necessarily include each other, and are in fact but different names for the same thing : there being no room for distinction or separation between them : Whoever attempts therefore to make a separation is an Enemy to both.

As His Majesty is the wise and tender Father of his People, He will always look upon those the best promoters of *his* Service, who in the best manner promote *their* Interest and Happiness : and we are still of opinion, that with that Interest and Happiness is connected the Removal of the General Court to Boston.

And the next Day his Honor was pleased to send to the Council the following Answer, *viz.*

Gentlemen of the Council,

I HAVE avoided Controversy with you not from a Sense of my Superiority, as you seem to insinuate, but from a Desire of living in Harmony with you. In your last Message you charge me with want of Candor and Justice.
You

You have laid me under a Necessity of answering your Message that I may vindicate my Character.

You had asserted in your first Message to me that the Governor *has full Power and Authority as he shall judge necessary* to adjourn, prorogue and dissolve the General Court, and that this Power could not be subject to the Controul of Instructions. I observed in my Answer to you that "the Practice of giving Instructions which began with the Charter, and has continued near fourscore Years, should have been sufficient to prevent the Council from taking Exception to them." You now say, that the Instructions you referred to were not Instructions in general, but such only as you apprehended militated with the Charter.

I have not designedly misrepresented any Part of your Message. Instructions, in the Case you referred to, appeared to me to militate with the Charter no more than in any other Case which I could then or at any Time since think of ; and I thought I had the same Reason to suppose you denied the Force of Instructions in general, as in this particular Case.

You say that by this special Grant of Power to a Governor, the Crown excludes itself from a Right of Controul. Why should the specifying

fying the particular Parts of the Governor's Power take away the Crown's Right of Controul, any more than a Grant of the Powers of Government in general Terms ? I pray you would attend to the Charter, and consider that the particular Parts of the Governor's Power which are specified are such as the Governor under the first Charter had no Right to. By Virtue of that Charter he could neither call, adjourn or prorogue, nor dissolve the General Court ; he had no Power of nominating Judges, Justices, Sheriffs, &c. no Negative upon any Acts of the Assembly, nor of the Council, no Power of appointing Military Officers, nor any Sort of Military Power more than any other Person in the Government. The Agents for the Colony, as appears by sufficient Memorials, were then soliciting in England that the Governor, to be appointed, might be restrained and have no more Power in these Cases than the Governor then in Place in the Colony. Does it then look probable that these Parts of the general Power of the Governor were enumerated in order to divest the Crown of its Right of Controul ? Do you imagine that when it is declared, the Governor shall have *full* Power by himself, or any chief Commander *to be appointed by him*, to govern the Militia, that it was the Intent of the Crown to give a Subject an uncontrollable Military Power ; and yet these are the Words of the Charter ? Is it not therefore without doubt

doubt that these Enumerations were made merely to exclude all Claim from any Authority within the Colony? If this be a just Observation, there is nothing to distinguish the Case you refer to from any other. No Part of my Conduct has ever given you any Room to suggest that I hold the King's Instructions above the Law, or that I can be justified in depriving the People of any Privilege to which they have a Right by Charter.

You then complain that I have injured you in charging you with explaining away the Prerogative into your own Hands and the Hands of the People. In your first Message you admit the Prerogative in the Crown or Governor to adjourn, or prorogue the Court, but add, that this Prerogative must be exercised for the public Good. The public Good, you might have added, is the great Purpose for which Government is instituted. You afterwards observe, that " In the present Case when every Reason arising from Convenience, Safety and Utility, demonstrates and urges the Fitness of the Court's sitting in Boston, the convening and keeping it elsewhere, contrary to the Mind of the two Houses and the Province in general, we humbly apprehend is an Exercise of the Prerogative, if not against Law, yet certainly against ancient Usage, and unwarranted by the Reason which supports all Prerogative, namely the public Good."

If you had submitted to the Exercise of the Prerogative in this Instance, I should have considered this Paragraph in the Nature of a Remonstrance only, in order to induce me to alter the Measure, from a Conviction of the Inexpediency of it ; for I wish to put the most favourable Sense upon your Expressions ; but when your declining to do Business is taken into Consideration also, had I no Reason to say, that all this, taken together, explained away the Prerogative into your own Hands and the Hands of the People ? You have not indeed expressly said that you will not proceed to Business. I wish I may have misapprehended your Intentions ; but, if I have done it, you certainly have given me so much Reason to do it that I cannot be chargeable with want of Candor or Justice. You have as little Reason to charge me with an Intention to bring upon you his Majesty's Displeasure, or procure an Alteration in the Constitution. If either of these should ever be the Case, they must be attributed to some other Cause, and not to any Thing which I have done.

My only Intention in my Answer to your Message is to vindicate myself from the Charges made against me, I shall therefore take no Notice of any other Parts of it. I despair of prevailing with you to concur in Sentiment with me. I am convinced that any further Arguments will
only

only tend to increase the Breaches which I should think myself happy to be able to repair.

Milton,
20th June, 1770.

T. HUTCHINSON.

On Thursday the 21st, it was mov'd in the House that a Committee be appointed to prepare a Message to the Lieutenant Governor, praying that His Honor would be pleased to order a Recess of the General Assembly ; and Mr. *Samuel Adams*, Mr. *Hancock* and Capt. *Sheaffe* were accordingly appointed. Who reported the following Draft, which was accepted by the House, and sent up by Mr. *Hancock*, Capt. *Sheaffe*, Mr. *Woodbridge*, Dr. *Holton*, and Mr. *Samuel Adams*, viz.

May it please your Honor,

IN your last Message to this House, you was pleased to say, that you were in daily Expectation of a Letter from his Majesty's Secretary of State, which it was probable would contain Matters of Importance to the Government ; and that therefore you then thought it necessary that the Court should continue sitting some Time longer.

The House would be glad to be informed whether in Consequence of any Letters you have received by the Packet now arrived, your Honor

has any Matters to lay before the Assembly. If so, the House is ready to attend their Duty, provided you will be pleased to remove the Assembly to its constitutional Place, the Town-House in Boston : But if your Honor is yet determined against such Removal, the Members of the House are very desirous of returning to their respective Homes.

After which his Honor was pleased to send down a Message to both Houses of Assembly, viz.

Gentlemen of the Council and House of Representatives,

I Cannot remove the Court to Boston. I am so sensible of the Mischief which must be the Consequence of your final Refusal to proceed in the public Business, that I must earnestly recommend to you a Reconsideration of your Votes or Resolves to the contrary. I am still in Expectation of important Advices. If I should not receive any before Monday, and you shall persist in your Refusal, it is my Intention then to give you a short Recess.

Cambridge,
21 June, 1770.

T. HUTCHINSON.

The foregoing Message having been read in the House of Representatives, the Question was then

then moved, *Whether the House still adhere to their Resolution ? viz.* That it is by no Means expedient to proceed to Business, while the General Assembly is *thus* constrained to hold their Session out of the Town of *Boston* ? Which being put, pass'd *unanimously* in the Affirmative—of which his Honor was made acquainted by the following Message, *viz.*

May it please your Honor,

YOUR Message of the 21st Instant has been read and considered in this House : In answer to which we beg Leave to say, that the Mischiefs which must be the Consequence of our receding from the Votes and Resolutions to which you refer, are so obvious, that the House have now unanimously resolved to adhere to the same.—Therefore, if your Honor is yet determined not to remove the Assembly to Boston, We are very desirous of Leave to return to our respective Homes.

The following Message to the Lieutenant Governor was pass'd at the Council Board on Monday June 25, and sent up to his Honor by *William Brattle, James Bowdoin, James Russell, John Bradbury and Samuel Dexter, Esqrs.* viz.

May

May it please your Honor,

OUR last Message to your Honor was not intended to injure your Character, but vindicate our own : and the present Message is grounded on the same Reason.

Your Honor in your last Message (sent to us the 21st Instant) having quoted a Paragraph from our Address relative to the Power of convening and holding the General Court, is pleased to suggest, that we had not "submitted to the exercise of the Prerogative in that Instance ; and that you had Reason to say, that we had explained away the Prerogative into our own Hands and the Hands of the People." These Suggestions your Honor will give us leave to say can have no Relation to this Board, as we have given no Occasion for them whatever : and we take this Opportunity of disclaiming, and do hereby disclaim, all Right to the Exercise of the Prerogative in the Instance above referred to, and in every other.

We thank your Honor for wishing to put the most favorable Sense upon our Expressions : but the Favor we have to ask for them is, that they may be considered as they stand connected in our Address : in which Case we humbly apprehend they will be found to convey a Sense that will justify them.

We

We shall not take Notice of any Parts of your Message that will lead to a Repetition of what we have already said: as we are content it should be judged of, without any further Explanation or Defence.

In comparing together the new and the old Charter, your Honor enumerates several Powers vested in the Governor by the new Charter, viz. the Powers of calling, proroguing and dissolving the General Court, of nominating and appointing Civil and Military Officers, &c. which were not vested in him by the old Charter; and from the Comparison, as also from a Clause of the new Charter, concerning the Governor's Power to govern the Militia, you are pleased to make this Inference, "that it is therefore without Doubt that those Enumerations were made merely to exclude all Claim to those Powers from any Authority within the Colony" before the Grant of the new Charter. But although it may appear "by sufficient Memorials that the Agents for the Colony were then soliciting in England that the Governor to be appointed might be restrained, and have no more Power in those Cases than the Governor then in Place in the Colony," yet we cannot see the Justness of the above-mentioned Inference: because, if the Design of the old Charter be considered, it will not appear just to argue from it the Intention of the new Charter: for your Honor has informed

formed us in your History of this Colony, that
 “ it is evident from the old Charter, that the original Design of it was to constitute a Corporation in England, like to that of the East-India and other great Companies, with Powers to settle Plantations within the Limits of the Territory, under such Forms of Government and Magistracy as should be fit and necessary.”

The Design of this old Charter being to constitute a Corporation in England, shews the Reason why “ by Virtue of it the Governor could neither call, adjourn or dissolve the General Court;” why “ he had no Power of nominating Judges, Justices, Sheriffs, &c.” and why he had “ no Power of appointing Military Officers, nor had any Sort of Military Power.” Such Powers given to a Corporation in England or to the Governor of it, would have been a Solecism in Politics, as it would have been the establishing of what is called *Imperium in Imperio*. But on the other Hand, there was a Fitness and Propriety, that such Powers should be so given where they respected a Corporation out of the Realm, and especially a Colony at the Distance of a Thousand Leagues from it : And accordingly in the new Charter, which was designed to constitute in this Colony a Form of Government, in a considerable Degree resembling that of England, the Governor is vested with those Powers: with which, for the Reason intimated above, it
 was

was unfit he should be vested by the first Charter. Hence it appears there is no sufficient Reason to deduce the Intention of the last Charter from the Difference of the Powers given by that and the first Charter : the End and Design of those Charters being different. But supposing the End and Design of both were the same, it would be of dangerous Tendency to determine the Design of the present Charter by any Thing beside that Charter itself : Especially if the Powers, with which it vests the Governor, are to be determined by that Design, and not by the Words of the Charter which describe and define them.

With Regard to the Clause of the Charter that relates to the Governor's Power over the Militia, and the Inhabitants of the Province in general ; it is so far from giving him an uncontrollable Military Power, that the Power is limited, and to be exercised (as in that Clause mentioned) for the special Defence and Safety of the Province. The words cited by your Honor, viz. " full Power to govern the Militia," if they refer to any Thing further than the training, instructing and exercising the Militia, cannot be understood to give a greater Power than may be exercised over the Inhabitants in general : which it is plain is limited, and to be exercised as above-mentioned. The said Clause then does not give to a Subject an uncontrollable military Power. The Consequences arising from the

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contrary

contrary Supposition cannot therefore support the Inference above-mentioned : nor can they affect either the Power given to the Governor by that Clause, or by any other Clause of the Charter ; and therefore cannot affect the Governor's Power of convening, adjourning, proroguing or dissolving the General Court.

Though it be absurd that a Subject should be vested by the Crown with a military Power, uncontrollable by itself, yet with Regard to civil Offices, there is no absurdity to suppose they should vest a Power uncontrollable by the Crown. Nay it is highly expedient and necessary, that some of them should vest such a Power : And in fact such a Power is vested in the Judges of England : And (to give no other instance) we think it is vested also in the Governor of this Province, so far as it relates to the Adjourning, Proroguing and Dissolving the General Court.

In the last Paragraph of your Honor's Message it is said, " that any further Arguments will only tend to increase the Breaches, which you should think yourself happy to be able to repair."—We are wholly ignorant what Breaches are here referred to. The only Breach we know of is, that your Honor and the Council have different Opinions about a Clause of the Charter : and this Breach (if it can be called one)

one) must of Necessity continue till we see sufficient Reason to accede to your Opinion. In the mean Time we take this Occasion to assure your Honor that this Difference in Opinion shall never on our Part interrupt the Harmony which it will give us Pleasure to see kept up between all the Branches of the General Court.

And on the same Day the Council sent up to his Honor another Message as follows, viz.

May it please your Honor,

IT gives the Board great Concern, That in your Message of the 22d Instant, directed to both Houses, after declaring how "sensible you are of the Mischiefs which must be the Consequence of our final Refusal to proceed in the public Business," you recommend it to us to reconsider our Votes or Resolves to the contrary; when nothing is more certain than that the Board never passed any one Vote, Resolve, or Order relative to their proceeding, or not proceeding on public Business: so far from it, as that it never was so much as the Subject of their Debate.

To the foregoing Messages his Honor was pleas'd to answer as follows, viz.

Gentlemen

Gentlemen of the Council,

WHEN it shall be considered, that in your first Message to me you tell me " that it would give you great pleasure to proceed in the Public Business," and then go on to give your reasons against holding the Court at Cambridge, and when it is further considered, that for three Weeks together you have done no business, although great part of the business lying before the Court might with propriety originate with you, and that your Messages to me, in which you take exception to the Court's sitting at Cambridge, and my Answers, are sent down to the House, which is new and unusual, and that their Votes and Resolves against doing business are sent up to you in the like unusual manner, I am content that it should be judged of without any further explanation, whether I had not sufficient reason to say, that you declined doing business, and whether it was not equivalent to an express refusal. If you did not intend it should be deemed a refusal, I wish you had let me know in answer to my last Message that you were willing to proceed to business.

You seem to mistake my intention in observing to you, that the several parts of the Governor's Power specified in the New-Charter were such as the Governor under the old Charter was not vested with. To prevent any

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ny exception to the Governor's exercising these Powers under the new Charter is an obvious reason for the mentioning them. To suppose they were likewise intended to exclude the Crown from its right of controul is without any foundation. Whether there was greater propriety in the Grant of these Powers under the new Charter than under the old is immaterial. Let the propriety be ever so great, yet it was necessary to specify them, or there would have been room left for dispute, for although the old Charter was intended for a Corporation in England, yet it had been carried to America, and the Powers granted by it had been exercised there, and there was the same necessity of a special explanation and restriction in the new Charter, as if the old had been originally designed for a Corporation or Colony in America; and although, as you observe, Powers may be necessary for a Colony different from those of a Corporation in England, yet it by no means follows that the Crown is excluded from its right of Controul in the exercise of those Powers, and if it be excluded, perhaps in both cases we shall be alike involved in the solecism of *Imperium in Imperio*.

I cannot agree with you that it would be of dangerous tendency to determine the design of the present Charter by any thing besides the Charter itself. Where there is any Ambiguity, there seems to be the same reason
for

for recurring to the particular circumstances attending the soliciting and granting it, as there is to Historical facts for the construction of any uncertain ambiguous Expressions in any ancient Statutes.

You say, that the Governor's Military Power is limited for the special defence and safety of the Province. Be it so, it does not follow that the Crown has excluded itself from directing how it shall be exercised for this purpose, in what places the Governor shall erect Forts, &c. and yet the Governor has as *full* Power to erect Forts as he has to call, adjourn or prorogue the Court ; nor does there appear to me any reason to suppose the Crown intended by the same mode of expression to retain its Military, and give up its Civil controul ; for your observation upon the Power vested in the Judges does not prove a distinction between the Civil and Military, but between the judiciary and ministerial Power.

As I see no prospect of persuading the Court to proceed to Business, and as I am unwilling the good People of the Province, should be at further charge, I shall give you a short recess, in hopes that at the next Meeting the difficulties you are now under will be removed, and that the several Branches of the Legislature will agree in Sentiment upon these points.

*Cambridge, 25th
June, 1779.*

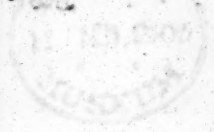
T. HUTCHINSON.

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In the Afternoon the Secretary came into the House and said, " It is his Honor's Pleasure that this Great and General Court or Assembly be Prorogued to Wednesday the 25th of *July* next, then to meet at *Harvard-College* in *Cambridge* : And the said Great and General Court or Assembly is Prorogued accordingly."



In the afternoon the Secretary came into the
House and said: "It is his Honor's pleasure that
this Court and General Court of All India be
transferred to Wodahing the 1st of July next.
Then to meet at Allahabad in October."
And the Lord Grant and General Court of All India
has been signed accordingly."



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